

KFME	53321	FARGO	ND	23	13	13
KVLY-TV	61961	FARGO	ND	44	11	44
KCPM	86208	GRAND FORKS	ND	0	27	27
KGFE	53320	GRAND FORKS	ND	56	2	15
KJRR	55364	JAMESTOWN	ND	18	7	7
KMCY	22127	MINOT	ND	15	14	14
KMOT	41425	MINOT	ND	58	10	10
KXMC-TV	55685	MINOT	ND	45	13	13
KXND	82615	MINOT	ND	0	24	24
KNRR	55362	PEMBINA	ND	15	12	12
KUMV-TV	41429	WILLISTON	ND	52	8	8
WENH-TV	69237	DURHAM	NH	57	11	11
WMUR-TV	73292	MANCHESTER	NH	59	9	9
WFUT-TV	60555	NEWARK	NJ	53	68	30
WNET	18795	NEWARK	NJ	61	13	13
KOAT-TV	53928	ALBUQUERQUE	NM	21	7	7
KRQE	48575	ALBUQUERQUE	NM	16	13	13
KTEL-TV	83707	CARLSBAD	NM	0	25	25
KUPT	27431	HOBBS	NM	16	29	29
KBIM-TV	48556	ROSWELL	NM	41	10	10
KOBR	62272	ROSWELL	NM	38	8	8
KRPV	53539	ROSWELL	NM	28	27	27
KRWB-TV	84157	ROSWELL	NM	0	21	21
KOBG-TV	85114	SILVER CITY	NM	0	6	12
KOVT	53911	SILVER CITY	NM	12	10	10
WPXJ-TV	2325	BATAVIA	NY	53	51	23
870331LW	72623	BATH	NY	0	14	14
WIVT	11260	BINGHAMTON	NY	4	34	34
WWNY-TV	68851	CARTHAGE	NY	35	7	7
WSKA	78908	CORNING	NY	0	30	30
WYDC	62219	CORNING	NY	50	48	48
WENY-TV	71508	ELMIRA	NY	55	36	36
WETM-TV	60653	ELMIRA	NY	2	18	18
WNYI	34329	ITHACA	NY	0	52	20
WNYB	30303	JAMESTOWN	NY	27	26	26
WABC-TV	1328	NEW YORK	NY	45	7	7
WCBS-TV	9610	NEW YORK	NY	56	2	33
WPIX	73881	NEW YORK	NY	33	11	11
WPXN-TV	73356	NEW YORK	NY	30	31	31
WLNY	73206	RIVERHEAD	NY	57	55	47
WHAM-TV	73371	ROCHESTER	NY	59	13	13
WHEC-TV	70041	ROCHESTER	NY	58	10	10

WRGB	73942	SCHENECTADY	NY	39	6	6
WNGS	9088	SPRINGVILLE	NY	46	67	46
WSPX-TV	64352	SYRACUSE	NY	0	56	15
WSTM-TV	21252	SYRACUSE	NY	54	3	24
WVPX	70491	AKRON	OH	59	23	23
WNEO	49439	ALLIANCE	OH	46	45	45
WBGU-TV	6568	BOWLING GREEN	OH	56	27	27
WKRC-TV	11289	CINCINNATI	OH	31	12	12
WJW	73150	CLEVELAND	OH	31	8	8
WKYC-TV	73195	CLEVELAND	OH	2	3	17
WTTE	74137	COLUMBUS	OH	36	28	36
WPTD	25067	DAYTON	OH	58	16	16
WBDT	70138	SPRINGFIELD	OH	18	26	26
WTOV-TV	74122	STEUBENVILLE	OH	57	9	9
WTOL	13992	TOLEDO	OH	17	11	11
WTVG	74150	TOLEDO	OH	19	13	13
KOAC-TV	50590	CORVALLIS	OR	39	7	7
KFFX-TV	12729	PENDLETON	OR	8	11	11
KGW	34874	PORTLAND	OR	46	8	8
KNMT	47707	PORTLAND	OR	45	24	24
KOPB-TV	50589	PORTLAND	OR	27	10	10
KPTV	50633	PORTLAND	OR	30	12	12
KPXG	5801	SALEM	OR	4	22	22
WLVT-TV	36989	ALLENTOWN	PA	62	39	39
WICU-TV	24970	ERIE	PA	52	12	12
WJET-TV	65749	ERIE	PA	58	24	24
WHP-TV	72313	HARRISBURG	PA	4	21	21
WPCW	69880	JEANNETTE	PA	49	19	11P
WWCP-TV	20295	JOHNSTOWN	PA	29	8	8
WCAU	63153	PHILADELPHIA	PA	67	10	34
WYBE	28480	PHILADELPHIA	PA	34	35	35
WQED	41315	PITTSBURGH	PA	38	13	13
WQEX	41314	PITTSBURGH	PA	26	16	38
WSWB	73374	SCRANTON	PA	31	38	38
WNAC-TV	73311	PROVIDENCE	RI	54	64	12
KTBC	35649	AUSTIN	TX	56	7	7
KNIC-TV	125710	BLANCO	TX		17	18
KZTV	33079	CORPUS CHRISTI	TX	18	10	10
KCOS	19117	EL PASO	TX	30	13	13
KTSM-TV	67760	EL PASO	TX	16	9	9
KVIA-TV	49832	EL PASO	TX	17	7	7
KHOU-TV	34529	HOUSTON	TX	31	11	11

KGNS-TV	10061	LAREDO	TX	15	8	8
KVTV	33078	LAREDO	TX	14	13	13
KCBD	27507	LUBBOCK	TX	9	11	11
KUPB	86263	MIDLAND	TX	0	18	18
KMLM	53541	ODESSA	TX	43	42	42
KOSA-TV	6865	ODESSA	TX	31	7	7
KWES-TV	42007	ODESSA	TX	13	9	9
KWWT	84410	ODESSA	TX	0	30	30
KENS-TV	26304	SAN ANTONIO	TX	55	5	39
KLRN	749	SAN ANTONIO	TX	8	9	9
KSAT-TV	53118	SAN ANTONIO	TX	48	12	12
KWEX-TV	35881	SAN ANTONIO	TX	39	41	41
WOAI-TV	69618	SAN ANTONIO	TX	58	4	48
KPCB	77452	SNYDER	TX	10	17	17
KLTV	68540	TYLER	TX	10	7	7
KPXL	61173	UVALDE	TX	0	26	26
WCAX-TV	46728	BURLINGTON	VT	53	3	22
KWPX	56852	BELLEVUE	WA	32	33	33
KQUP	78921	PULLMAN	WA	0	24	24
KWSU-TV	71024	PULLMAN	WA	17	10	10
KCTS-TV	33749	SEATTLE	WA	41	9	9
KAYU-TV	58684	SPOKANE	WA	30	28	28
KHQ-TV	34537	SPOKANE	WA	15	6	7
KCPQ	33894	TACOMA	WA	18	13	13
KSTW	23428	TACOMA	WA	36	11	11
KPDX	35460	VANCOUVER	WA	48	49	30
KAZW-TV	84238	WALLA WALLA	WA	9	9	9
WBIJ	81503	CRANDON	WI		4	4
WEAU-TV	7893	EAU CLAIRE	WI	39	13	13
WLUK-TV	4150	GREEN BAY	WI	51	11	11
WKBT	74424	LA CROSSE	WI	41	8	8
WLEF-TV	63046	PARK FALLS	WI	47	36	36
WAOW-TV	64546	WAUSAU	WI	29	9	9
WSAW-TV	6867	WAUSAU	WI	40	7	7
WFXS	86204	WITTENBERG	WI	0	55	50
WBOY-TV	71220	CLARKSBURG	WV	52	12	12
WOWK-TV	23342	HUNTINGTON	WV	47	13	13
WDTV	70592	WESTON	WV	6	5	5
WTRF-TV	6869	WHEELING	WV	32	7	7

APPENDIX D5

GRANTED REQUESTS FOR ALTERNATIVE CHANNEL ASSIGNMENTS

Call Sign	Facility ID #	Community	State	Current NTSC Channel	Current DTV Channel	Current TCD	Post Transition Channel
KJNP	20015	NORTH POLE	AK	4	20	4	20
KTNL	60519	SITKA	AK	13	2	2	7
KETZ	92872	EL DORADO	AR		12	12	10
KBDI	22685	BROOMFIELD	CO	12	38	38	13
WBBM-TV	9617	CHICAGO	IL	2	3	11	12
KFJX	83992	PITTSBURG	KS	14	0	14	13
WDBD	71326	JACKSON	MS	40	41	41	40
WFUT	60555	NEWARK	NJ	68	53	41	30
KNMT	47707	PORTLAND	OR	24	45	24	45
KEVN	34347	RAPID CITY	SD	7	18	18	7
960405KF	81692	MEMPHIS	TN	14		14	23
KLCW	77719	WOLFFORTH	TX	22		22	43
WOAY	66804	OAK HILL	WV	4	50	4	50

APPENDIX D6

REQUESTS FOR CHANGES TO APPENDIX B ANTENNA INFORMATION

Call Sign	Facility ID #	Community	State	Current NTSC Channel	Current DTV Channel	Post Transition Channel
KQCA	10242	STOCKTON	CA	58	46	46
WFGX	6554	FORT WALTON BEACH	FL	35	50	50
WFSG	6093	PANAMA CITY	FL	56	38	38
WEAR	71363	PENSACOLA	FL	3	17	17
WFSU	21801	TALLAHASSEE	FL	11	32	32
WMUM	23935	COCHRAN	GA	29	7	7
WKYU	71861	BOWLING GREEN	KY	24	18	18
WCVB	65684	BOSTON	MA	5	20	20
KCWE	64444	KANSAS CITY	MO	29	31	31
WRAZ	64611	RALEIGH	NC	50	49	49
WXII	53921	WINSTON-SALEM	NC	12	31	31
KOCT	53908	CARLSBAD	NM	6	19	19
KOFT	53904	FARMINGTON	NM	3	8	8
WLWT	46979	CINCINNATI	OH	5	35	35
WKRN	73188	NASHVILLE	TN	2	27	27
KACV	1236	AMARILLO	TX	2	8	8
WRIC	74416	PETERSBURG	VA	8	22	22

APPENDIX D7

DENIED REQUESTS FROM NEW APPLICANTS

Call Sign	Facility ID #	Community	State	Current NTSC Channel	Current DTV Channel
New	35855	SACRAMENTO	CA		
New	83711	WEAVERVILLE	CA	32	
New		OWENSBORO	KY	48	
New	169025	KALISPELL	MT		46
New		TULSA	OK	26	

APPENDIX E

FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Seventh Further Notice of Proposed Rulemaking* ("*Seventh Further Notice*").² The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are discussed below. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. This *Seventh Report and Order* ("*Seventh R&O*") adopts rules implementing a new post-transition DTV Table of Allotments ("DTV Table"), providing all eligible⁴ full power broadcast television stations with channels for DTV operations after the transition. The new post-transition DTV Table finalizes the channel and facilities necessary to complete the digital transition for full power television stations, including full power commercial and noncommercial broadcast television stations.

3. The new post-transition DTV Table is based on the tentative channel designations ("TCDs") announced for eligible broadcast licensees through the channel election process, as well as on the Commission's efforts to promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities. During this election process, which was established by the *Second DTV Periodic Report and Order*, eligible full power broadcast licensees selected their ultimate DTV channel inside the "core spectrum," consisting of current television channels 2 through 51 (54-698 MHz).⁵ In developing the proposed new allotments, the Commission sought to accommodate broadcasters' channel preferences, as well as their replication and maximization service area certifications (made via FCC Form 381).

4. The new post-transition DTV Table achieves the goals set forth for the channel election process.⁶ First, the new DTV Table provides all eligible stations with channels for DTV operations after the transition. Second, the new DTV Table is the result of informed decisions by licensees when making their channel elections and licensees benefited from the clarity and transparency of the channel election process. Third, the new DTV Table recognizes industry expectations by protecting existing service and respecting investments already made, to the extent feasible. Finally, the new DTV Table reflects our efforts to promote overall spectrum efficiency and ensure the best possible DTV service to the public.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 - 612., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Seventh Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, 21 FCC Rcd 12100 (2006) ("*Seventh Further Notice*").

³ See 5 U.S.C. § 604.

⁴ Only Commission licensees and permittees were eligible to participate in the channel election process to select a final DTV channel. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 1830, ¶ 66.

⁵ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18292, ¶ 33.

⁶ *Id.* at 18291, ¶ 31.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁰ The rules of this *Seventh R&O* will primarily affect full power television stations, as opposed to low power television stations and television translator stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

7. *Television Broadcasting.* The rules and policies adopted in this *Seventh R&O* apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts.¹¹ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”¹² The Commission has estimated the number of licensed commercial television stations to be 1,376.¹³ According to Commission staff review of the BIA Financial Network, MAPro Television Database (“BIA”) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹⁴

⁷ 5 U.S.C. § 603(b)(3).

⁸ *Id.* § 601(6).

⁹ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹⁰ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹¹ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹² *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹³ See News Release, “Broadcast Station Totals as of December 31, 2006,” 2007 WL 221575 (dated Jan. 26, 2007) (“*Broadcast Station Totals*”); also available at <http://www.fcc.gov/mb/>.

¹⁴ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* note 446; however, we are using BIA’s estimate for purposes of this revenue comparison.

(or about 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380.¹⁵ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁶ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

9. *Class A TV, LPTV, and TV translator stations.* The rules and policies adopted in this *Seventh R&O* do not directly affect low power television stations, as the DTV Table adopted in the *Seventh R&O* finalizes post-transition digital channels only for full power television stations. Nonetheless, as discussed in Section E, *infra*, low power television stations will also eventually transition from analog to digital technology and may be indirectly affected by the channel allotment decisions herein. The broadcast stations indirectly affected include licensees of Class A TV stations,¹⁷ low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts.¹⁸ Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators.¹⁹ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.5 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

¹⁵ See *Broadcast Station Totals*, *supra* note 446.

¹⁶ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹⁷ In general, low power television stations are secondary to full power television stations and must accept interference from full power stations. The Community Broadcasters Protection Act, and the Commission's rules implementing that statute, give certain low power television (LPTV) stations, known as Class A stations, some limited protection from interference by full-service stations. See Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), codified at 47 U.S.C. § 336(f). See also 47 C.F.R. §§ 73.6000-6027.

¹⁸ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁹ See *Broadcast Station Totals*, *supra* note 446.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

10. The rules adopted in this *Seventh R&O* involve no changes to reporting, recordkeeping, or other compliance requirements beyond what is already required under the current regulations.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁰

12. The new post-transition DTV Table provides all eligible full power broadcast television stations – large and small alike – with channels for post-transition DTV operations. Small broadcasters, just like large ones, benefited from participating in the channel election process. The new DTV Table is the result of informed decisions by licensees when making their channel elections, and all licensees benefited from the clarity and transparency of the channel election process. Moreover, the new DTV Table recognizes industry expectations by protecting existing service and respecting investments already made, for both large and small broadcasters, to the extent feasible. The TCDs are primarily based on the channels elected by licensees. The vast majority of licensees participating in the channel election process received a TCD for a channel they elected, and all comments, including those from small broadcasters, were considered when finalizing this Table.²¹

13. In general, our goal in reviewing the comments filed in response to the proposed Table was to accommodate the requests made by commenters to the extent possible consistent with the standards outlined in the *Seventh Further Notice*. Large and small broadcasters alike benefited from this approach, which was taken in an effort to expedite finalization of the DTV Table and Appendix B so that stations can complete construction of their post-transition facilities by the statutory deadline for the DTV transition. Where commenters made specific requests for changes to the proposals in the *Seventh Further Notice*, requests that provided for an alternative service area for the station or parameters that differed from those proposed by the Commission, those requests were granted to the extent possible consistent with the standards of the *Seventh Further Notice* and, in particular, with the applicable interference standards. This process has been open and transparent, and has provided consistent treatment for large and small broadcasters.

14. The new DTV Table adopted herein does not provide for channels for low power television stations. The Commission will address the digital transition for low power television (“LPTV”) stations in a separate proceeding. The statutory transition deadline established by Congress in 2006 – February 17, 2009 – applies only to full-power stations.²² One of the Commission’s goals in the *Seventh Report and Order* is to permit full power stations to finalize their post-transition facilities by this rapidly approaching deadline. The Commission previously determined that it has discretion under 47 U.S.C. § 336(f)(4) to set the date by which analog operations of stations in the low power and translator service

²⁰ 5 U.S.C. § 603(c)(1)-(c)(4)

²¹ See, e.g., Comments of Trinity Christian Center of Santa Ana, Inc.; Southern Broadcasting, Inc., Young Broadcasting, Inc., and Christian Faith Broadcast, Inc.

²² See Digital Television and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

must cease.²³ The Commission has stated that the intent is to ensure that low power and translator stations not be required to prematurely convert to digital operation in a manner that could disrupt their analog service or, more importantly, that might cause them to cease operation.²⁴ The Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations.²⁵ The Commission has recognized that low power television stations are a valuable component of the nation's television system and has stated its intention to facilitate, wherever possible, the digital transition of these stations.²⁶

F. Report to Congress

15. The Commission will send a copy of this *Seventh R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²⁷ In addition, the Commission will send a copy of this *Seventh R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Seventh R&O* and FRFA (or summaries thereof) will also be published in the Federal Register.²⁸

²³ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19336 ¶ 12 (2004) ("LPTV DTV Report and Order").

²⁴ *Id.* at 19337 ¶ 14.

²⁵ *Id.* at 19336 ¶ 19.

²⁶ *Id.* at 19332, ¶ 1.

²⁷ See 5 U.S.C. § 801(a)(1)(A).

²⁸ See *id.* § 604(b).

APPENDIX F

PROPOSED RULE CHANGES

Part 73 of the Commission's Rules and Regulations (Chapter I of title 47 of the Code of Federal Regulations) is proposed as follows:

PART 73 -- RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.622 is amended by adding new paragraph (i) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

- (i) Post-Transition Table of DTV Allotments.

ALABAMA

Community	Channel No.
Tuscaloosa	6

COLORADO

Community	Channel No.
Greeley	49
Pueblo	48

IDAHO

Community	Channel No.
Nampa	13

ILLINOIS

Community	Channel No.
Galesburg	8

INDIANA

Community	Channel No.
Evansville	7

NEVADA

Community	Channel No.
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Reno	8
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PENNSYLVANIA

Community	Channel No.
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Jeannette	11
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APPENDIX G

**[Note: Proposed DTV Table of Allotments Information
is attached separately in Microsoft Excel format.]**

y	State and City		NTSC	DTV								
			Chan	Chan	ERP (kW)	HAAT (m)	Antenna ID	Latitude (DDMMSS)	Longitude (DDMMSS)	Area (sq km)	Population (thousand)	% Int Re
6	AL	TUSCALOOSA	23	6	1	266	80096	330315	873257	18093	595	
0	CO	GREELEY		49	1000	382		402448	1041940	32251	2400	
1	CO	PUEBLO	48	48	50	695	80244	384442	1045137	20898	906	
7	DC	WASHINGTON	20	35	500	227		385722	770459	20241	6949	
0	ID	NAMPA	12	13	17	829		434518	1160552	41141	555	
6	IL	GALESBURG		8	15	333	80193	411844	902245	24719	795	
5	IN	EVANSVILLE	25	7	3.2	301	80191	375157	873404	21506	699	
2	KS	PITTSBURG	7	7	15.5	332	80204	371315	944225	29053	543	
0	LA	NEW ORLEANS	38	15	775	286	80216	295659	895728	24543	1724	
9	LA	NEW ORLEANS	26	26	1000	286	80217	295659	895728	24703	1734	
1	NV	RENO	8	8	15.6	893	80185	391849	1195300	39660	667	
0	PA	JEANNETTE	19	11	6.5	303	80099	402334	794654	21639	2960	
8	PA	PHILADELPHIA	29	42	1000	281	43286	400226	751419	20599	7425	

APPENDIX H

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Eighth Further Notice of Proposed Rulemaking* ("*Eighth Further Notice*"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Eighth Further Notice provided in paragraph 163 of the item. The Commission will send a copy of the *Eighth Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Eighth Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for and Objectives of the Proposed Rules

2. The *Eighth Further Notice* proposes modifications to the new post-transition DTV Table of Allotments and Appendix B ("DTV Table"). Three new full power permittees and six existing full power licensees and permittees are provided with channels and parameters for digital broadcast operations after the DTV transition. Changes to the new post-transition DTV Table affects full power commercial and noncommercial broadcast television stations as the new DTV Table provides post-transition channels for all eligible full power stations⁴ and changes to the Table may have interference or other implications for other broadcasters in the Table.

3. The Commission announced in the *Seventh Further Notice* that, to the extent possible, it would accommodate future new permittees in the new post-transition DTV Table, but that it would provide an opportunity for public comment before doing so.⁵ Three new construction permits were issued to permittees too late to be offered for comment in an earlier Public Notice, but can be accommodated in the new DTV Table without causing impermissible interference.⁶ Six existing licensees and permittees made late-filed requests for modifications to the new DTV Table. Although these requested changes are unopposed, appear non-controversial, and would have been looked upon favorably had they been timely-filed, we find it appropriate to provide a full opportunity for comment.

4. We believe these proposed modifications to the new post-transition DTV Table support the goals set forth for the channel election process.⁷ By these proposed modifications, the new permittees are provided with channels for DTV operations after the transition. Where adjustments bring the Table into line with the facilities or service areas of existing licensees or permittees, they recognize industry expectations and respect investments already made. These proposals also move the overall post-transition

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 -612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ Only Commission licensees and permittees were eligible to participate in the channel election process to select a final DTV channel. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 1830, ¶ 66.

⁵ *Seventh Further Notice*, 21 FCC Rcd at 12118, ¶ 53.

⁶ Public Notice, "Revisions to Proposed New DTV Table of Allotments, Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the *Seventh Further Notice of Proposed Rule Making* in MB Docket No. 87-268," DA 07-20 (MB rel. Jan. 8, 2007), 72 FR 2485 (Jan. 19, 2007) ("*New Permittees PN*").

⁷ *DTV Periodic Report and Order*, 19 FCC Rcd at 18291, ¶ 31.

DTV Table more quickly towards finality without sacrificing clarity or transparency. Finally, we believe the proposed changes reflects our efforts to promote overall spectrum efficiency and, in particular, to ensure the best possible DTV service to the public.

B. Legal Basis

5. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 5(c)(1), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 155(c)(1), 157, 301, 302, 303, 307, 308, 309, 316, 319, 324, 336, and 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹¹ The proposed rules in this *Eighth Further Notice*, if adopted, will primarily affect television stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

7. *Television Broadcasting.* The proposed rules and policies in this *Eighth Further Notice* apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts.¹² Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”¹³ The Commission has estimated the number of licensed commercial television stations to be 1,376.¹⁴ According to Commission staff review of the BIA Financial Network,

⁸ *Id.* § 603(b)(3).

⁹ 5 U.S.C. § 601(6).

¹⁰ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹¹ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹² See 13 C.F.R. § 121.201, NAICS Code 515120.

¹³ *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹⁴ See News Release, “Broadcast Station Totals as of December 31, 2006,” 2007 WL 221575 (dated Jan. 26, 2007) (“*Broadcast Station Totals*”); also available at <http://www.fcc.gov/mb/>.

MAPro Television Database ("BIA") on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹⁵ (or about 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380.¹⁶ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁷ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

9. *Class A TV, LPTV, and TV translator stations.* The rules and policies proposed in this *Eighth Further Notice* do not directly affect low power television stations, as the DTV Table to which changes are being proposed will finalize post-transition digital channels only for full power television stations. Nonetheless, as discussed in Section E, *infra*, low power television stations will also eventually transition from analog to digital technology and may be indirectly affected by the channel allotment decisions herein. The broadcast stations indirectly affected include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts.¹⁸ Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators.¹⁹ Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.5 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

¹⁵ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* note 446; however, we are using BIA's estimate for purposes of this revenue comparison.

¹⁶ See *Broadcast Station Totals*, *supra* note 446.

¹⁷ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹⁸ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁹ See *Broadcast Station Totals*, *supra* note 446.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

10. The proposals set forth in this *Eighth Further Notice* would involve no changes to reporting, recordkeeping, or other compliance requirements beyond what is already required under the current regulations.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁰

12. The proposed changes will allow the new post-transition DTV Table to provide all eligible broadcast television stations – large and small alike – with channels for post-transition DTV operations. No distinction was made between large and small licensees and permittees when determining which proposals to include in the *Eighth Further Notice*. Small broadcasters, just like large ones, benefited from participating in the channel election process, and had an equal opportunity to review the proposed DTV Table and request modifications. The TCDs and parameters proposed are based almost entirely on elections by licensees. All stations affected by the proposals in the *Eighth Further Notice* will have the opportunity to comment, and the Commission will consider all comments, including those proposing alternative allotments for specific stations. No alternative to existing proposals for specific modifications to the DTV Table for purposes of DTV allotments are proposed herein. In general, the transition procedures utilized in selecting final DTV allotments have been sufficiently transparent and flexible and eligible applicants for post-transition DTV allotments have been provided with the opportunity to make elections and to suggest alternative allotments.

13. The *Eighth Further Notice* invites comment from broadcasters, including small broadcasters, on the proposed modifications to the new post-transition DTV Table. In addition, we invite comment on other ways in which we could consider the particular needs and interests of small businesses in finalizing the post-transition DTV Table.

14. The new DTV Table for which the *Eighth Further Notice* proposes modifications does not provide for channels for low power television stations. The Commission will address the digital transition for low power television (“LPTV”) stations in a separate proceeding. The statutory transition deadline established by Congress in 2006 – February 17, 2009 – applies only to full-power stations.²¹ One of the Commission’s goals in this proceeding is to permit full power stations to finalize their post-transition facilities by this rapidly approaching deadline. The Commission previously determined that it has discretion under 47 U.S.C. § 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease.²² The Commission has stated that the intent is to ensure that

²⁰ 5 U.S.C. § 603(c)(1)-(c)(4)

²¹ See Digital Television and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

²² *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19336 ¶ 12 (2004) (“LPTV DTV Report and Order”).

low power and translator stations not be required to prematurely convert to digital operation in a manner that could disrupt their analog service or, more importantly, that might cause them to cease operation.²³

The Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations.²⁴ The Commission has recognized that low power television stations are a valuable component of the nation's television system and has stated its intention to facilitate, wherever possible, the digital transition of these stations.²⁵

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals

15. None.

²³ *Id.* at 19337 ¶ 14.

²⁴ *Id.* at 19336 ¶ 19.

²⁵ *Id.* at 19332, ¶ 1.